

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

July 19, 2001

ORDER

PUBLIC UTILITIES COMMISSION  
Investigation of Central Maine Power  
Company's Stranded Cost, Transmission  
And Distribution Utility Revenue Requirements,  
And Rate Design

Docket No. 97-580

BANGOR HYDRO-ELECTRIC COMPANY  
Authorization to Sell Generation Assets

Docket No. 98-820

MAINE PUBLIC SERVICE COMPANY  
Authorization to Sell Generation Assets

Docket No. 98-584

WELCH, Chairman; NUGENT and DIAMOND, Commissioner

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**I. SUMMARY**

By this Order, we approve a settlement between Central Maine Power Company (CMP) and the minority owners of the Wyman Unit No. 4 generating facility, including Bangor Hydro-Electric Company (BHE) and Maine Public Service Company (MPS), in which CMP agrees to pay the minority owners \$12 million for value received by CMP for selling its majority share in Wyman 4 to FPL Energy. We also direct CMP, BHE and MPS to make the proper accounting adjustments to each of their Asset Sale Gain Accounts to reflect the financial consequences of the settlement.

**II. BACKGROUND**

A. Description of Dispute

On April 7, 1999, CMP sold its hydro and fossil generating units to FPL Energy (FPL). As part of that transaction, CMP sold its approximate 59% majority ownership in Wyman Unit No. 4 generating facility and transferred all the related rights and obligations under the Wyman 4 Joint Ownership Agreement (JOA) to FPL. On August 31, 1999, 11 minority owners of Wyman 4 (including BHE and MPS) served a Demand for Arbitration on CMP with respect to the sale of the Wyman 4. The Demand asserted that CMP's sale to FPL constituted a sale of the site development rights, the common facilities or related facilities as provided for within sections 5, 6 and 7 of the JOA. As such, the minority owners would be entitled to a share of the proceeds from the sale of Wyman 4 to FPL. The JOA provides a formula to calculate the sharing of the proceeds received for site development or the sale of common or related facilities. The minority owners alleged that their share of the FPL proceeds "have a present value well in excess of \$25 million." Later, after CMP settled its tax valuation dispute with the Town of Yarmouth for a value of all the Wyman facilities of \$350 million, the minority owners claim was estimated to be worth \$62 million.

On December 7, 1999, CMP filed its answer to the demand. CMP contends that, upon the sale of all of its interests in Wyman 4 and its rights and obligations under the JOA, CMP did not consummate a sale triggering an obligation to the minority owners under the JOA.

In November 1999, CMP and the minority owners agreed that Justice Stewart Pollock, a former New Jersey Supreme Court justice, would act as the single arbitrator of the dispute. In December, the proceeding was split into an initial liability phase followed, if necessary, by a damages phase. The liability phase of the proceeding was scheduled to begin hearings on May 21, 2001.

On April 23, 2001, CMP and the minority owners reached a settlement agreement to dispose of all claims raised in the August 31, 1999 Demand for Arbitration. The agreement was memorialized in a term sheet detailed in a letter dated May 17, 2001. Under the terms of the settlement, CMP will pay the minority owners \$12 million in exchange for a full release from all claims arising out of CMP's sale to FPL. In accordance with Millstone 3 settlement agreement, by which CMP sold its Millstone 3 interest,<sup>1</sup> Northeast Utilities will remit to CMP \$973,494, which is Public Service of New Hampshire's share of the settlement.

B. CMP's Petition

On May 25, 2001, CMP filed a petition requesting that the Commission find as prudent the proposed settlement of the minority owners' claim against CMP. CMP also asks that the Commission allow CMP to reduce its Asset Sale Gain Account (ASGA) by the \$12 million paid to the minority owners, increased by the legal expenses incurred by CMP in defending the claim, with carrying costs, and decreased by the payment that will be received from Northeast Utilities. This equals approximately \$12.2 million. CMP states that the settlement is conditioned upon our approval of the settlement and authorization for CMP to offset any payments against the ASGA. CMP asserts that the settlement is in the best interest of the Company and its ratepayers, because it manages the risk of higher liability and avoids significant litigation costs.

C. BHE's Motion

On May 25, 2001, BHE filed a Motion for Supplemental Order in its divestiture proceeding, Docket No. 98-820. BHE states that, as required under the Restructuring Act, it submitted a plan for divesting its generation assets to the

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<sup>1</sup> The Commission approved CMP's sale of Millstone 3 by Order on February 24, 2000 in Docket No. 99-928 and No. 98-058.

Commission on February 9, 1998. On June 17, 1998, the Commission approved BHE's divestiture plan. *Bangor Hydro-Electric Company*, Docket No. 98-114 (June 17, 1998). Pursuant to the divestiture plan, BHE solicited bids for most of its generation assets, including its interest in Wyman Unit No. 4. On February 3, 1999, the Commission authorized and approved the sale by BHE of certain generating and generation-related assets to PP&L Global, Inc. (PPLG), in accordance with the terms and conditions of an Asset Purchase Agreement (APA) dated September 25, 1998. *Bangor Hydro-Electric Company*, Docket No. 98-820 (Feb. 3, 1999). In accordance with the terms of the APA, BHE sold its interest in Wyman Unit No. 4 to an affiliate of PPLG, but excluded from the sale all rights of Bangor Hydro to receive payments from any other Wyman 4 joint owner pursuant to Sections 5, 6, 7 and 7.1 of the JOA.

BHE describes the claim made by the minority owners and the settlement of the claim. BHE states that it is entitled to \$2, 617,000 of the \$12 million payment. BHE asserts that, given the risks and uncertainties of litigating the claim, the Wyman 4 proposed settlement is fair and reasonable. Furthermore, BHE argues the proposed settlement works to mitigate the Company's stranded cost burden and is part of BHE's ongoing efforts to implement its divestiture plan approved by the Commission in 1998.

BHE states that Commission approval of the proposed Wyman 4 settlement appears to be required because its claim against CMP constitutes a generation-related business activity which was excluded from BHE's sale of its Wyman Unit No. 4. In any event, BHE states that the Wyman 4 settlement is conditioned upon BHE receiving PUC approval of the settlement.

D. MPS's Motion

On May 29, 2001, MPS filed a Motion for Supplemental Order. In its Motion, MPS states that the Commission approved its divestiture plan by Order dated February 20, 1998 in Docket No. 97-670. Pursuant to its plan, MPS solicited bids for its generation assets, including its 3.3455% interest in Wyman Unit No. 4. By Order dated April 5, 1999 in Docket No. 98-584, the Commission approved the sale by MPS of certain of its generation assets to WPS Power Development, Inc. As part of the sale to WPS-PDI, MPS sold its interest in Wyman Unit No. 4. However, MPS expressly reserved the right that MPS may have "to receive payments from any other holder (or former holder) of a joint ownership interest" in Wyman Unit No. 4 pursuant to sections 5, 6, 7 or 7.1 of the JOA.

MPS states that its share of the \$12 million settlement is \$1, 080,000. According to MPS, the Wyman 4 settlement is a component of MPS's obligation to divest itself of its interest in all generation assets and was not included in the divestiture of those assets previously approved by the Commission in its April 5, 1999 Order in Docket 98-820. MPS asserts that the Wyman 4 settlement is reasonable and should be approved by the Commission because it mitigates MPS's stranded costs and eliminates the risk and expense of litigation by providing a certain and fixed recovery. MPS also

states that Commission approval of the Wyman 4 settlement is contingent upon Commission approval.

E. Procedural Background

On June 14, 2001, the Commission held a technical conference, consolidated for all three dockets, at which the Examiners and the Public Advocate had the opportunity to question representatives of CMP, BHE and MPS regarding the reasons for entering into the settlement and the foreseeable risks of not settling the claim.<sup>2</sup>

On June 28, 2001, CMP, BHE, MPS and the Public Advocate filed a joint stipulation in all three dockets which recommends that the Commission find all three utilities have acted prudently in entering into the settlement and that the Commission should grant the approvals necessary for CMP, BHE and MPS to implement the Wyman 4 settlement agreement. The stipulating parties also agree that the Commission should adjust each utility's Asset Sale Gain Account as requested by the respective utilities.

CMP also asks for a waiver of the filing requirements of paragraph 29(e) of the Docket 97-580 Phase II-B Stipulation. By paragraph 29(e), CMP states that it should seek prudence review and authority to make ASGA adjustments for the Wyman 4 settlement as part of the pending stranded cost case, Docket No. 2001-232. The pending stranded cost case will establish the revenue requirement for CMP's stranded costs effective on March 1, 2002. Because the Wyman 4 settlement is contingent on Commission approval, CMP seeks immediate Commission review and action so that the settlement can be implemented or the arbitration continued. By processing CMP's petition, the Examiners had implicitly granted CMP a waiver of paragraph 29(e). By our action reflected in this Order, we explicitly grant the waiver.

**III. DECISION**

In past cases, we have applied the following criteria when considering stipulations.

1. whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement; and
2. whether the process that led to the stipulation was fair to all parties; and

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<sup>2</sup> Portions of the Technical Conference were held in camera. Representatives of BHE and MPS were excluded from participating or hearing answers by CMP representatives. Similarly, representatives of CMP were excluded from participating or hearing some of the responses by MPS and BHE.

3. whether the stipulated result is reasonable and is not contrary to legislative mandate.

See *Central Maine Power Company, Proposed Increase in Rates*, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me P.U.C. Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Decision)*, Docket No. 95-052, Order (Me. P.U.C. June 26, 1996). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. See *Northern Utilities, Inc. Proposed Environmental Response Cost Recovery*, Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997). We find that the Stipulation in this case meets all the above criteria.

The joint stipulation represents a continuation of the effort to divest the generation assets and mitigate the stranded costs of Maine's three investor-owned transmission and distribution utilities. The petition by CMP and the motions by BHE and MPS have been processed as part of the restructuring dockets that have extensive service lists and a broad range of intervenors. The petition and motions, as well as the notice of the technical conference, were sent to the service list of all three dockets. The Public Advocate, charged to represent the interest of all ratepayers, has participated in the matter and joins the stipulation. The other parties to these three dockets had the opportunity to participate, but chose not to do so. In this context, the joint stipulation represents a sufficiently broad spectrum of interests and the process leading to the stipulation was fair, and in fact was agreed to, by all parties that chose to participate.

We also find that the stipulated result is reasonable. In each of the utilities stranded costs rate case and divestiture cases, we have established the principle that, in accordance with the Restructuring Act, gains and losses from the sale of generating assets should inure to ratepayers. See *e.g. Central Maine Power*, No. 97-580 at 95 (March 19, 1999). In the case of the Wyman 4 minority owners' claims against CMP, the stipulating parties in Phase II-B of Docket 97-580 expressly agreed that this principle applies in this instance. The Phase II-B stipulation provided a deferral for costs relating to this matter as follows:

The parties stipulate and agree that CMP shall defer with carrying costs for later offset, to the extent prudently incurred, against the ASGA the following costs which are not included in the determination of stranded costs in this proceeding:

...

- (d) outside legal costs and any payments made related to the action of the joint owners of the W.F. Wyman Unit 4 against CMP.

We approved the Phase II-B stipulation by Order on February 29, 2000.

The parties to the Phase II-B stipulation also agreed that a settlement between CMP and Northeast Utilities (NU) with respect to the operation and disposition of CMP's interest in Millstone 3 was prudent. As part of the CMP-NU settlement, NU agreed to reimburse CMP for any payment to Public Service of New Hampshire (PSNH) as a minority owner of Wyman 4. Further, the Phase II-B stipulation provides that ratepayers and not shareholders are entitled to recovery of payments by NU to CMP as a reimbursement of the minority claims otherwise due PSNH. Thus, the Commission has already decided that Wyman 4 settlement costs by CMP would be recorded through an offset against the ASGA unless the Commission finds such expenditures were incurred imprudently.

We believe that the actions of CMP, as well as BHE and MPS, in settling this matter, are prudent. The record shows that BHE and MPS, represented by counsel for the minority claimants, have vigorously asserted the claimants' rights to part of the proceeds from CMP's sale to FPL. The record also shows that CMP's lawyers have appropriately contested the minority owners' claims. Based upon CMP's settlement of its dispute with the Town of Yarmouth over the tax assessment of the Wyman facilities, CMP faced an exposure of \$62 million if the minority owners had succeeded. We agree with the logic of CMP's position, that the transfer of all CMP's rights and obligations to FPL should not trigger the sharing of proceeds. When the arbitrator examined the entirety of the agreement, and the evidence of the parties intent, he may well have agreed with this logic. However, the JOA provides for the sharing of the "proceeds", and it is difficult to argue that the money from FPL to CMP was not "proceeds." The arbitrator could interpret the agreement to grant the minority owners a stake in any benefit that CMP might receive from a transfer of the site development rights, or of the common and related facilities, despite the fact that such a benefit might come to CMP without any detriment to the minority owners. Because of the significant potential liability that CMP faced, its decision to settle the matter for a total of \$12 million was reasonable.

Likewise, MPS and BHE also faced uncertain litigation risks. The arbitrator could agree with the logic of CMP's argument that the JOA should not be interpreted to provide a portion of its divestiture proceeds to the minority owners when the minority owners' interest in Wyman 4 is completely unchanged. BHE and MPS's decision to avoid this litigation risk and accept payment of a significant sum is also reasonable.

Accordingly, we

## ORDER

1. That the settlement agreement as described in the term sheet letter of May 17, 2001 and attached to Central Maine Power Company's petition of May 25, 2001 is approved;

2. That we find the actions of Central Maine Power Company, Bangor Hydro-Electric Company and Maine Public Service Company in agreeing to the settlement agreement described in ordering paragraph 1 were prudent;
3. That Central Maine Power Company shall make the adjustments to its Asset Sale Gain Account consistent with this Order and the Docket 97-580 Phase II-B Stipulation;
4. That Bangor Hydro-Electric Company and Maine Public Service Company, by entering into the Wyman 4 Settlement Agreement, have satisfied their obligations in 35-A M.R.S.A. § 3208(4) to mitigate stranded costs;
5. That Bangor Hydro-Electric Company and Maine Public Service Company adjust their Asset Gain Sale Accounts to reflect the payment received from Central Maine Power Company as part of the Wyman 4 settlement agreement, net of outside litigation expenses.

Dated at Augusta, Maine, this 19<sup>th</sup> day of July, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:

Welch  
Nugent  
Diamond

**THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION**

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.